

PATENT

Attorney's Docket No. 2570-CIP 4

COMBINED DECLARATION AND POWER OF ATTORNEY
(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,
CONTINUATION OR CIP)

As a below named inventor, I hereby declare that:

TYPE OF DECLARATION

This declaration is of the following type: (check one applicable item below)

- ☐ original
☐ design
☐ supplemental

NOTE: If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application do not check next item; check appropriate one of last three items.

- ☐ national stage of PCT

NOTE: If one of the following 3 items apply then complete and also attach ADDED PAGES FOR DIVISIONAL, CONTINUATION OR CIP.

- ☐ divisional
☐ continuation
☒ continuation-in-part (CIP)

INVENTORSHIP IDENTIFICATION

WARNING: If the inventors are each not the inventors of all the claims an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

TITLE OF INVENTION

A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment
in Bone

SPECIFICATION IDENTIFICATION

the specification of which: (complete (a), (b) or (c))

- (a) ☐ is attached hereto.
(b) ☒ was filed on August 15, 1997 as ☒ Serial No. 08/ 911,805
or ☐ Express Mail No., as Serial No. not yet known _____
and was amended on _____ (if applicable).

NOTE: Amendments filed after the original papers are deposited with the PTO which contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 CFR 1.67.

- (c) ☐ was described and claimed in PCT International Application No. _____ filed on _____
and as amended under PCT Article 19 on _____ (if any).

ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37, Code of Federal Regulations, § 1.56

(also check the following item, if desired)

☐ In compliance with this duty there is attached an information disclosure statement in accordance with 37 CFR 1.98.

PRIORITY CLAIM (35 U.S.C. § 119)

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

(complete (d) or (e))

(d) ☒ no such applications have been filed.

(e) ☐ such applications have been filed as follows.

NOTE: Where item (c) is entered above and the International Application which designated the U.S. itself claimed priority check item (e), enter the details below and make the priority claim.

A. PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. § 119

COUNTRY (OR INDICATE IF PCT)	APPLICATION NUMBER	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 USC 119
			<input type="checkbox"/> YES NO <input type="checkbox"/>
			<input type="checkbox"/> YES NO <input type="checkbox"/>
			<input type="checkbox"/> YES NO <input type="checkbox"/>
			<input type="checkbox"/> YES NO <input type="checkbox"/>
			<input type="checkbox"/> YES NO <input type="checkbox"/>

ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION

NOTE: If the application filed more than 12 months from the filing date of this application is a PCT filing forming the basis for this application entering the United States as (1) the national stage, or (2) a continuation, divisional, or continuation-in-part, then also complete ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR CIP APPLICATION for benefit of the prior U.S. or PCT application(s) under 35 U.S.C. S 120.

POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number)

Ralph G. Hohenfeldt (17,717)
Daniel D. Ryan (29,243)

Allan O. Maki (20,623)
Philip P. Mann (30,960)

(check the following item, if applicable)

- ☐ Attached as part of this declaration and power of attorney is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

SEND CORRESPONDENCE TO

DIRECT TELEPHONE CALLS TO:
(Name and telephone number)

Daniel D. Ryan
RYAN, MAKI, MANN & HOHENFELDT, S.C.
633 West Wisconsin Avenue
Suite 1900
Milwaukee, Wisconsin 53203

Daniel D. Ryan
(414) 271-6555

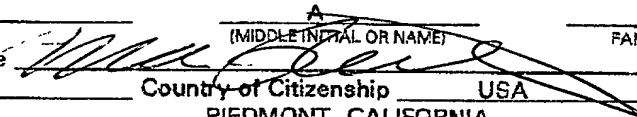
DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

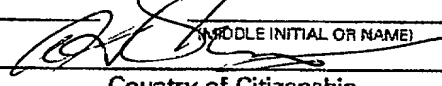
SIGNATURE(S)

NOTE: Carefully indicate the family (or last) name as it should appear on the filing receipt and all other documents.


Full name of sole or first inventor

MARK (GIVEN NAME) A (MIDDLE INITIAL OR NAME) REILEY (FAMILY (OR LAST NAME))
 Inventor's signature 
 Date 6/19/98 Country of Citizenship USA
 Residence PIEDMONT, CALIFORNIA
 Post Office Address 304 PALA AVENUE
 PIEDMONT, CALIFORNIA 94611


Full name of second joint inventor, if any

ARIE (GIVEN NAME) (MIDDLE INITIAL OR NAME) SCHOLTEN (FAMILY (OR LAST NAME))
 Inventor's signature 
 Date 6/19/98 Country of Citizenship USA
 Residence FREMONT, CALIFORNIA
 Post Office Address 4175 TAMAYO STREET
 FREMONT, CALIFORNIA 94536

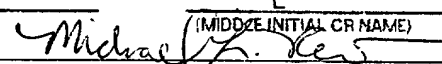
Full name of third joint inventor, if any

KAREN (GIVEN NAME) D (MIDDLE INITIAL OR NAME) TALMADGE (FAMILY (OR LAST NAME))
 Inventor's signature 
 Date 6/19/98 Country of Citizenship USA
 Residence PALO ALTO, CALIFORNIA
 Post Office Address 2320 BRYANT STREET
 PALO ALTO, CALIFORNIA 94301

Full name of fourth joint inventor, if any

ROBERT (GIVEN NAME) M (MIDDLE INITIAL OR NAME) SCRIBNER (FAMILY (OR LAST NAME))
 Inventor's signature 
 Date 5/29/98 Country of Citizenship USA
 Residence LOS ALTOS, CALIFORNIA
 Post Office Address 1133 MIGUEL AVENUE
 LOS ALTOS, CALIFORNIA 94024

Full name of fifth joint inventor, if any

MICHAEL (GIVEN NAME) L (MIDDLE INITIAL OR NAME) REO (FAMILY (OR LAST NAME))
 Inventor's signature 
 Date 6/18/98 Country of Citizenship USA
 Residence REDWOOD CITY, CALIFORNIA
 Post Office Address 701 BALTIC CIRCLE NO. 731
 REDWOOD CITY, CALIFORNIA 94065

CHECK PROPER BOX(ES) FOR ANY OF THE FOLLOWING ADDED PAGE(S) WHICH
FORM A PART OF THIS DECLARATION

☐ Signature for sixth and subsequent joint inventors. Number of pages added _____

* * *

☐ Signature by administrator(trix), executor(trix) or legal representative for deceased or
incapacitated inventor. Number of pages added _____

* * *

☐ Signature for inventor who refuses to sign or cannot be reached by person authorized under 37
CFR 1.47. Number of pages added _____

* * *

☒ Added pages to combined declaration and power of attorney for divisional, continuation, or
continuation-in-part (CIP) application.

☒ Number of pages added 2

* * *

☐ Authorization of attorney(s) to accept and follow instructions from representative

* * *

*(If no further pages form a part of this declaration then end this declaration with this
page and check the following item:)*

☐ This declaration ends with this page

**ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY
FOR DIVISIONAL, CONTINUATION OR C-I-P APPLICATION**

(complete this part only if this is a divisional, continuation or C-I-P application)

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S) UNDER 35 U.S.C. 120

I hereby claim the benefit under Title 35, United States Code, S 120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, S 112, I acknowledge the duty to disclose information that is material to the examination of this application, namely, information where there is substantial likelihood that a reasonable Examiner would consider it important in deciding whether to allow the application to issue as a patent, which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application.

**PRIOR U.S. APPLICATIONS OR PCT INTERNATIONAL APPLICATIONS
DESIGNATING THE U.S. FOR BENEFIT UNDER 35 USC 120:**

U.S. APPLICATIONS	U.S. FILING DATE	Status (CHECK ONE)		
		Patented	Pending	Abandoned
1. 0 8 / 871,114	06/09/1997		X	
2. 0 8/ 659,678	06/05/1996		X	
3. 0 8/ 485,394	06/07/1995			X
4. 0 8/ 188,224	01/26/1994			X

PCT APPLICATIONS DESIGNATING THE U.S.

PCT APPLICATION NO.	PCT FILING DATE	U.S. SERIAL NOS. ASSIGNED (if any)
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

35 USC 119 PRIORITY CLAIM, IF ANY, FOR ABOVE LISTED U.S./PCT APPLICATIONS

**DETAILS OF FOREIGN APPLICATION FROM WHICH PRIORITY APPLICATION
CLAIMED UNDER 35 USC 119**

Above Appln. No. year)	Country	Application No.	Date of filing (day, month, year)	Date of issue (day, month,
1.				
2.				
3.				
4.				
5.				
6.				

PATENT

Attorney Docket No. 2570-CIP 4

Applicant or Patentee: Mark A. Relley et al.
Serial or Patent No.: 08/ 911,805
Filed or Issued: August 15, 1997
For: A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY
STATUS (37 CFR 1.9(F) and 1.27(c) - SMALL BUSINESS CONCERN**

I hereby declare that I am

- ☐ the owner of the small business concern identified below:
☒ an official of the small business concern empowered to act on behalf of the
concern identified below:

NAME OF CONCERN Kyphon Inc.
ADDRESS OF CONCERN 120 Independence Drive
Menlo Park, California 94025

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third-party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed, to and remain with the small business concern identified above with regard to the invention, entitled

A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone
by inventor(s) Mark A. Relley; Arie Scholten; Karen D. Talmadge; Robert M. Scribner; and Michael L. Reo

described in

☐ the specification filed herewith.
☒ application serial no. 08/ 911,805 , filed August 15, 1997
patent no. _____ , issued _____

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

**NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).*

NAME _____
ADDRESS _____

☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

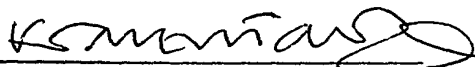
NAME _____
ADDRESS _____

☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Karen K. Talmadge
TITLE OF PERSON OTHER THAN OWNER President
ADDRESS OF PERSON SIGNING 120 Independence Drive
Menlo Park, California 94025


SIGNATURE

6/19/98
Date

ASSIGNMENT

WHEREAS, Mark A. Reiley of Piedmont, California; Arie Scholten of Fremont, California; Karen D. Talmadge of Palo Alto, California; Robert M. Scribner of Los Altos, California; and Michael L. Rao of Redwood City, California (hereinafter referred to as ASSIGNORS), have invented and own a certain invention entitled A Sterile Kit for Holding a Single Use, Expandable Structure Intended for Deployment in Bone for which application for Letters Patent of the United States has been filed on August 16, 1997 as Serial No. 08/911,805 (attorney's Docket No. 2570-CIP 4);

WHEREAS, Kyphon, Inc. of Menlo Park, California (hereinafter referred to as ASSIGNEE), is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries;

NOW THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that in consideration of the payment of ASSIGNEE to ASSIGNORS of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration, ASSIGNORS hereby sell, assign and transfer to ASSIGNEE the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, renewal, substitute or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted.

ASSIGNORS hereby covenant that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment and sale;

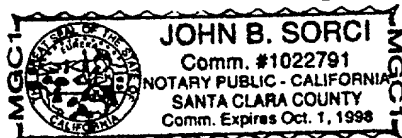
ASSIGNORS further covenant that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNORS and will testify as to the same in any interference or litigation related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof in any foreign country which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS THEREOF, I have hereunto set hand and seal this 19 day of June, 1998.

[Signature]
Mark A. Reiley

State of Calif.)
County of Santa Clara) ss.

Personally appeared before me this 19 day of June, 1998, the above named Mark A. Reiley, to me known to be the person who executed the foregoing Assignment and acknowledged the same as his free act and deed.



(Seal)

John B. Sorci
Notary Public
My commission expires 1 Oct 98

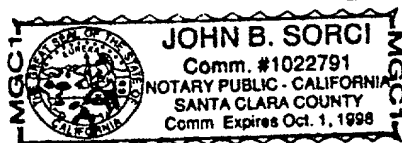
* * * * *

IN WITNESS THEREOF, I have hereunto set hand and seal this 19 day of June, 1998.

[Signature]
Arie Scholten

State of Calif.)
County of Santa Clara) ss.

Personally appeared before me this 19 day of June, 1998, the above named Arie Scholten, to me known to be the person who executed the foregoing Assignment and acknowledged the same as his free act and deed.



(Seal)

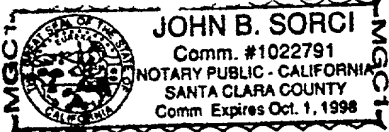
John B. Sorci
Notary Public
My commission expires 1 Oct 98

IN WITNESS THEREOF, I have hereunto set hand and seal this 19 day of June, 1998.

Karen D. Talmadge
Karen D. Talmadge

State of Calif.)
County of Santa Clara) ss.

Personally appeared before me this 19 day of June, 1998, the above named Karen D. Talmadge, to me known to be the person who executed the foregoing Assignment and acknowledged the same as his free act and deed.



(Seal)

John B. Sorci
Notary Public
My commission expires 1 Oct 98

* * * * *

IN WITNESS THEREOF, I have hereunto set hand and seal this 29 day of May, 1998.

Robert M. Scribner
Robert M. Scribner

State of CA)
County of Santa Clara) ss.

Personally appeared before me this 29th day of May, 1998, the above named Robert M. Scribner, to me known to be the person who executed the foregoing Assignment and acknowledged the same as his free act and deed.



(Seal)

Rebecca B. Miller
Notary Public
My commission expires 7/11/2000

* * * * *

IN WITNESS THEREOF, I have hereunto set hand and seal this 18 day
of JUNE, 1998.

Michael L. Reo
Michael L. Reo

State of California)
County of Santa Clara) ss.

Personally appeared before me this 18th day of June, 1998,
the above named Michael L. Reo, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

HAER CHOI
Notary Public
My commission expires Jan-31-2002

